

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:07-CV-168-DSC**

BELK, INC., and BELK)	
INTERNATIONAL, INC.,)	
)	
Plaintiffs,)	ORDER
v.)	
)	
MEYER CORPORATION, U.S., and)	
MEYER INTELLECTUAL)	
PROPERTY LIMITED,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on Plaintiffs’ “Motion in Limine to Exclude Didow Expert Report and Testimony” (document #134) filed December 29, 2008 and “Motion for Summary Judgment” (document #136) filed January 5, 2009; “Defendants’ Motion to Bar Testimony and Survey of Thomas Dupont Based on Federal and Fourth Circuit Evidentiary Standards” (document #144) filed February 6, 2009; as well as the parties’ associated briefs and exhibits (documents #135, 137, 143, 145-49, 154, and 158).

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c). On November 3, 2009, this matter was re-assigned to the undersigned Magistrate Judge. These Motions are now ripe for determination.

Having carefully reviewed the pleadings, record, written and oral arguments of counsel,¹ and applicable authority, the Court determines that taking the evidence in the light most favorable to

¹On June 16, 2009, the Magistrate Judge to whom this case was then assigned (the Honorable David C. Keesler) held a hearing on the pending Motion for Summary Judgment. The undersigned has reviewed the transcript of that hearing.

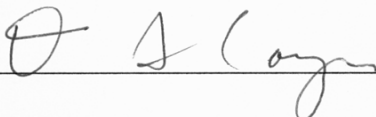
Defendants, there is an issue of material fact as to their remaining Counterclaim for trade dress infringement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiffs' "Motion for Summary Judgment" (document #136) is **DENIED**.
2. Plaintiffs' "Motion in Limine to Exclude Didow Expert Report and Testimony" (document #134) and "Defendants' Motion to Bar Testimony and Survey of Thomas Dupont Based on Federal and Fourth Circuit Evidentiary Standards" are **DENIED WITHOUT PREJUDICE** to their respective rights to raise those and any other evidentiary issues in Motions in Limine filed at the appropriate time prior to trial.
3. The Court will enter an Amended Pretrial Order and Case Management Plan.
4. The Clerk is directed to place this case on the calendar for trial during the Court's February 1, 2010 Civil Jury Term.
5. Counsel for the parties are encouraged to explore settlement of the remaining claim in light of the Court's ruling herein, and to consider whether returning to the previously-ordered mediation might be advisable. Provided, however, counsel are advised that the Court intends to try this case during its February 1, 2010 Term and therefore any efforts to settle their differences in the interim should be promptly commenced.
6. The Clerk is further directed to send copies of this Order to counsel for the parties..

SO ORDERED.

Signed: November 5, 2009



David S. Cayer
United States Magistrate Judge

